POARCH BAND OF CREEK INDIANS

5811 Jack Springs Road • Atmore, Alabama 36502
Tribal Offices: (251) 368-9136 • Administrative Fax: (251) 368-4502
www.poarchcreekindians-nsn.gov

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National Indian Gaming Commission
1441 L Street, NW, Suite 9100
Washington, DC 20005
Via email: reg.review@NIGC.gov

Re: NIGC Discussion Drafts on 25 CFR Parts 543 and 547

Dear Commissioners,

On behalf of the Poarch Band of Creek Indians, I thank you for the opportunity to comment on the National Indian Gaming Commission's Discussion Drafts for 25 CFR Part 543, the MICS for Class II Gaming, and 25 CFR Part 547, the Technical Standards for Class II Gaming. As you know, the Poarch Band of Creek Indians operates three class II facilities in the State of Alabama and changes in the area of class II gaming are therefore very important to us.

Since December 2006, I, along with PCI Tribal Regulators Daniel McGhee and Linda McGhee, have had the pleasure of participating in the Tribal Gaming Working Group ("TGWG"). This coalition of representatives from the Class II tribal gaming industry – including elected tribal officials, tribal gaming regulators and operators, gaming equipment manufacturers and suppliers, gaming laboratories, tribal organizations, attorneys, and a broad spectrum of technical experts – have worked tirelessly to review the class II MICS and Technical Standards in an effort to develop a revised set of regulations that are better suited to class II gaming. The work of the TGWG culminated in a revised set of regulations that provide flexibility for tribal gaming regulatory agencies and operations to establish specific controls, policies and procedures that protect the integrity of Indian gaming, while still allowing for them to be tailored to the individual circumstances of each operation.

We appreciate that the NIGC presented the TGWG's proposed MICS and Technical Standards to its Tribal Advisory Committee ("TAC") for class II gaming as the starting point in the advisory process. As you know, Daniel McGhee served as a member of the TAC, and we were glad when the entire TAC embraced the TGWG's approach of having a set of basic regulations that include the requisite controls, and then supplementing them with more detailed guidance documents. These guidance documents include the type of detail that while outside the realm of minimum standards, will certainly prove helpful to tribes when promulgating their own internal control policies and procedures.

Because of the time and resources that tribes like Poarch Creek have dedicated to developing a strong, usable set of class II regulations, we were disappointed when the NIGC abruptly canceled the last two meetings of the TAC. And unfortunately, this decision seems to have resulted in a Discussion Draft for Part 543 that consists of a mishmash of language pulled

from various earlier documents. Insufficient editing has resulted in a wholly unworkable document as the dissimilar versions were not properly melded together. While we realize that the document is a "discussion draft," given the efforts of Indian country to develop workable documents, we would have hoped that the NIGC's product would have been more legitimate.

Because of the condensed time for review and comment, we were only able to provide an initial review of the drafts. As such, we attach comments and concerns raised by TGWG and TAC members, including Poarch Creek, in their review of the drafts. We incorporate those questions and concerns here and respectfully request the NIGC to address each of them.

As an initial matter, the Tribe was disappointed that the NIGC rejected the TGWG idea of developing a set of MICS that are truly *minimum* internal control standards. Over the years, controls have been added to the MICS that while informative, are outside the realm of minimum controls. The TGWG worked hard to separate the two, developing a set of true minimum controls, and then placing the other additional standards into a set of guidance documents. This approach was supported by the TAC and is consistent with the Indian Gaming Regulatory Act ("IGRA"). And we note that there is federal precedent for this type of an approach. As was noted during the San Diego consultation, the Financial Crimes Enforcement Network, or "FinCEN," within the Treasury Department, uses guidance documents quite extensively to supplement various other minimum requirements. This model works well in situations like this where all parties want to provide a strong regulatory framework while remaining within the confines of controlling federal law. The Tribe strongly suggests that the NIGC reconsider and adopt the TGWG's proposed approach – endorsed by the TAC – of establishing true minimum standards at the federal level and, through the use of NIGC guidance documents, nurturing comprehensive internal control standards at the tribal level.

The Tribe also *strenuously* opposes separating the bingo section of the MICS into various separate sections. Bingo is bingo regardless of whether it is played electronically or with paper cards and an ink dauber. In the interest of the long-term viability of bingo and class II gaming as a whole, the NIGC should *not* attempt to distinguish between various types of the game. Doing so weakens the legal argument that – in accordance with IGRA – a tribe can offer *all* forms of bingo in a state where *any* form is allowed. Further, there is no benefit to distinguishing between them in the MICS. Any issue with regard to the applicability of a certain control to a particular form of the game is already addressed with language specifying that if the control does not relate, it is inapplicable.

We would also note that from a practical perspective, dividing bingo into separate sections is confusing and would limit the types of games a tribe could offer. Given the variety of bingo games in play today, it would be difficult to determine which version within the Discussion Draft would apply. Bingo games often incorporate both manual and electronic components, and we would oppose any attempt to limit this flexibility and the creativity of game developers. The Tribe asks that the idea of separating the bingo section into various sections be abandoned.

Technical Standards for Class II Gaming

With regard to 25 CFR Part 547, we appreciate that the NIGC is moving forward with these technical standards and know that they will be of great benefit the gaming industry. A number of our comments on the Discussion Draft for Part 547 are below. Additional comments on Part 547 are attached.

§547.2 - Definition of "Agent"

The NIGC deleted the following sentence from this section: "This definition permits the use of computer applications to perform the function(s) of an agent." The sentence should be reinstated at the end of the sentence for the following reason:

> "The TGWG's original intent with this portion of the definition was to clarify that tribes and operators may utilize class II system features in lieu of human agents to minimize costs, speed patron service, and increase accuracy and security of transactions. This would include class II system components such as kiosks, ticket validation systems, automated payout machines, currency counters, etc. An example would be when the class II system component is acting as the agent as a kiosk. The system has the ability to validate portions of the payout transaction with greater speed and accuracy than a human could further protecting the payout process from potential misappropriation. Eliminating systems from being an authorized agent could lead to unwarranted additional costs and potential error when a system is better suited to a task."

§547.2 - Definition of "Electromagnetic interference"

The TGWG proposed the following definition: "Electromagnetic interference, (EMI) is the disruption of operation of an electronic device when it is in the vicinity of an electromagnetic field (EM field) in the radio frequency (RF) spectrum that is caused by another electronic device." The NIGC changed this definition to read: "Electromagnetic interference. The physical characteristic of an electronic component to emit electronic noise either into free air, onto the power lines, or onto communication cables." The definition supplied by the TGWG was suggested by one of the preeminent testing laboratories in the world and is in use in gaming jurisdictions worldwide. It is unclear as to where the NIGC definition came from, but it is believed to be inaccurate. In order to ensure consistency with gaming jurisdictions throughout the world, the definition supplied by the TGWG and endorsed by the TAC should be used.

§547.2 - Definition of "Proprietary Class II System Component"

This term is not used in the Technical Standards and should be removed. Further, as defined, the term could cause a variety of problems when integrating various class II components. It is common for systems to use a multitude of components, including some

developed outside the gaming industry, such as Microsoft Windows. Nothing within these Technical Standards should prevent this.

§547.3(a) - Minimum Standards

The NIGC included a phrase that reads: "... recognizing that TGRAs also regulate Class II gaming, ...". Given that tribes are the primary regulators of class II gaming, this phrase is offensive and should be deleted.

§547.3(c) - Only applicable standards apply

This section begins with the sentence: "Gaming equipment and software used with Class II gaming systems must meet all applicable requirements of this part." The next sentence reads: "For example, if a Class II gaming system lacks the ability to print or accept vouchers, then any standards that govern vouchers do not apply." When read together, the intent of this section seems clear, but when the two sentences are taken individually, there is some confusion.

The confusion comes from the first sentence that reads, "[g]aming equipment and software used with Class II gaming systems must meet all applicable requirements of this part." Because the gaming equipment and software discussed herein is class II – and the requirements of this part apply to class II gaming equipment and software – it could be argued that *all* requirements of this part *are* applicable. This, however, is not what this section intends.

Accordingly, in order to clarify the intent of the section, the first sentence of this section should be rewritten to read: "Gaming equipment and software used with Class II gaming systems must meet *only those requirements of this part that are applicable to the particular gaming equipment and software in use* ~~all applicable requirements of this part~~."

§547.3 - Who is responsible for implementing these standards?

At §547.2(b), the TGWG proposed the following language: "TGRA Authority. Recognizing that the TGRA is the primary regulator of Class II gaming, nothing in this part is designed or intended to diminish TGRA authority." The NIGC deleted this section from its Discussion Draft. This language should be added to §547.3 of the Discussion Draft just before the section titled "State Jurisdiction."

§547.5(a) - Grandfathered Gaming Systems

One of the biggest problems with the Technical Standards is the grandfather clause. When Part 547 was originally finalized, a 5-year grandfather clause was incorporated to accommodate older technology. In order to be grandfathered, the equipment had to be submitted to a testing lab by November 10, 2008. The Discussion Draft provides that in order to be

grandfathered, the equipment still would have had to have been submitted to a testing lab by the 2008 date. We would note that the TGWG suggested that this section be deleted in its entirety as the compliance period has passed. The NIGC instead modified the section by changing the directive from "the TGRA must require" to "the TGRA must have required." But notably, the standards under which the games would have had to have been tested have changed. It would have been impossible for the lab to test the components against the 2012 standards in 2008. As a result, *all existing lab certifications will no longer be valid.* And because of the way in which the language is drafted, the original 5-year period still applies. Now, four years later, there is little time for tribes to make use of these sometimes-critical components.

In order to resolve this problem, the Tribe recommends two options. Our preferred option is that the section be rewritten so that all equipment subject to the technical standards that is *manufactured* after a certain date must comply with these standards. This option seems the most fair and is one that comports with the general policy of the federal government. When the U.S. Government makes changes applicable to the automotive industry, for example, manufacturers are not required to retrofit all cars on the road, and owners are not required to discontinue their use. Instead, all cars manufactured *after* a certain date must meet the new requirements. This solution is reasonable and does not impose an unfair burden on either the manufacturer or the current owner of the car. The same idea should be implemented here.

Our second option would be to implement a new five-year grandfather clause. Again, because the rules have changed, this option is fair and reasonable. Still, we believe that any class II gaming system component that has previously been certified or validated through judicial proceeding should remain available for use by tribes as they deem warranted. Eliminating the availability of these components could create competitive imbalances and financial hardships, as well as damage the viability of class II gaming.

There is also great concern that the NIGC is attempting to invalidate court decisions that found certain games to be class II games. The NIGC should not overturn the decision of a federal court. The continuing classification of these games as class II is critical to the longevity of class II gaming and Indian gaming as a whole. Regardless of whether the Tribe may even want to play these games, they provide critical ammunition in our continued operation. Accordingly, the following language should be added to the draft: "Nothing in this Part is intended to prohibit the continued use of any component certified against any earlier version of these grandfather provisions or to outlaw play of any game ruled to be class II by any judicial ruling."

§547.5(b) - Grandfather provisions

The TGWG suggested the following provision: "Nothing in this section is intended to prevent a TGRA from approving a grandfathered component to be added to a fully compliant Class II gaming system, or affect the certification of a fully compliant Class II gaming system." The NIGC deleted this provision from its Discussion Draft. This language needs to be reinserted. This is important because the Discussion Draft currently does not allow the addition of a grandfathered component to a system that has been certified under Part 547 without

transforming the entire system into a grandfathered system. A lot of time, money and energy have been invested into obtaining system approval under Part 547. The last thing a tribe would want is for the system to lose its approved status by adding a grandfathered component. As such, the language above needs to be added to the NIGC draft.

§547.5(c)(3) - Submission, testing, and approval -- generally

The NIGC is requiring that the testing laboratory certify compliance with "any applicable federal laws or regulations." This requirement is far too inclusive. It would be next to impossible for a testing laboratory to review *all federal laws and regulations* to determine which ones are applicable. It would also be very costly for them to do so. As an alternative, the TGWG suggested that the testing laboratory note "other compliance documents contained in the submission." A compromise between the two should be developed to better capture the issue.

It is therefore suggested that the language be modified to read: "The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying to its findings and conclusions. This report must also include a list of federal laws and regulations that were reviewed and whether the submission was determined by the testing laboratory to be compliant with the same."

§547.9(a)(1) and (2) - Accounting Functions

The NIGC added in these two sections that applicable NIGC requirements must be adhered to in addition to those of the TGRA. Because TGRA requirements are written to include those that are required by the NIGC, these additions are duplicative. Reference to the "Commission" should be deleted from both sections.

§547.16(b) - Disclaimers

The requirement that certain items be "continually displayed" to a patron presents a hardship to Indian country. While this may be appropriate with the larger player interfaces, it is wholly unacceptable for smaller devices such as handhelds or bingo minders. By the time these disclaimers are added to the device, there will be no room for the game to be displayed. And as technology grows and players begin to use their own devices such as a cellular phone to participate in a game, this requirement will be unworkable. Perhaps the disclaimers can be included to the game rules or displayed once at the beginning of each game.

§547.17 - Variance/Alternate Standards

As an initial matter, we note that the title of this section was changed from "granting a variance" to "issuing an alternate standard." We support this change as it better captures the

intent of the section. This aside, it seems that Indian country would be best served by developing language that combines the NIGC and TGWG proposals.

For one, the TGWG version allowed the tribe to grant a variance and then notify the NIGC and provide an opportunity to comment on the variance. The NIGC draft requires that the NIGC approve the variance. A suitable compromise should be developed. Further, the NIGC Preliminary Draft includes the following statement at §547.17(a)(2)(ii): "The alternate standard as granted and the record on which it is based." Even when read in context with the rest of this section, this statement is unclear. The NIGC should clarify the meaning of this sentence.

The Poarch Band of Creek Indians thanks you for the opportunity to comment on Part 543 and 547. Please let me know if you need any additional information or have any questions.

Sincerely,

Stephanie A. Bryan

Stephanie Bryan, Vice-Chair
Poarch Band of Creek Indians

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PRELIMINARY COMMENTS ON THE NIGC DISCUSSION DRAFTS FOR 25 CFR PARTS 543 AND 547

I. 25 CFR PART 543 MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

1. Section 543.2 What are the definitions for this part?

- "Accountability" may not be defined correctly. Please verify.
- "Agent" doesn't support the use of systems as an agent because the proposed definition limits an agent to a "person"; there are a couple sections that say a system can act as an agent but the absence in the definition is very limiting. To avoid confusion, please reinsert suggested TGWG language into the definition of "agent.".
- The definition for "cashless transaction" was removed. Please reinsert.
- Deleted complimentary items. It is unclear why the NIGC wouldn't want to define "complimentary."
- Deleted credit line
- Gaming promotions may require some rework; definitely need to add "Class II game play" vs. "game play"
- Network Communication Equipment; apparently this term was defined based on language in the TGWG Guidance documents
  - This term is used in the IT section and changed the intent of TGWG proposal to secure communication and with use of the term replacing "communication" it changes there requirements to be imposed on the "equipment" rather than on the communication.
- "Sufficient clarity" is being used again; this definition includes subjective content; includes reference to 20 frames per second, which is a specific technology and could become limiting. Use of this definition should be deleted.
- Deletion of unrestricted patron deposit accounts
  - Need to review final Bank Secrecy Act changes

2. Section 543.3 How do tribal governments comply with this part?

- In (h)(2), the NIGC properly notes that "...the TGRA is the primary regulator..."
- Elsewhere, the NIGC states "...that TGRAs also regulate..." This change is offensive to Indian country and should be returned to its previous language. This is true for this section of the document as well as all others.

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3. **Section 543.4 Does this part apply to small and charitable gaming operations?**

   - By using "charitable organization," does this section limit entities to 501(3)(c) organizations? If so, this should be changed as it would be too limiting and not support non-organized charities such as medical assistance, rebuilding a house, etc. needed by the tribal community. Often these charities are not officially structured as 501(3)(c) organizations.

4. **Section 543.5 How does a gaming operation apply to use an alternate control standard from those set forth in this part?**

   - Same language as in 547; they use the same "...recognizing that TGRAs also regulate..."
   - There is no definition of "alternate standard." If this term is going to be used in the MICS, it should be defined. Otherwise, it could cause any wording differences to be submitted for variance versus a significant change in intent and coverage.
   - This section suggests that any procedural change, such as doing something in a different order, requires submission for a variance. This should not be the case.

5. **Sections 543.7 Gaming System Bingo and 543.8 Manual Bingo**

   - Manual and electronic bingo should not be separated. The technology used must not be distinguished, and these two sections must be put back together or precedent damaging to the long-term viability of bingo will be established. See following examples of concerns:
     - (b)(3) – Requires number of bingo cards from a system; however the technical standards do not require number of bingo cards; this should be changed to Amount In to be consistent with Part 547
     - (c)(2) - References $1,200 for a payout threshold rather than the simply referencing the applicable regulation. TGWG recommends referencing the external regulation to ensure that these documents are always up-to-date.
     - (c)(3) All objects eligible for the draw are available to be drawn prior to the next draw. – This is applicable only to paper bingo
     - Page 11 (E) Payouts – Requires 2 agents to validate and verify payout prior to paying; remember this section is for "electronic bingo"; the language used suggests that two agents must verify and validate EVERY win before it is paid, this would require having two people standing at every player interface to verify every play that include a win; surely this is taken out of context and intended to require two agents for significant payouts

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- Page 18 regarding inventory and storage of physical bingo cards is not consistent with TGWG recommendations, which provided for management to determine exact procedural requirements based on the specific operation needs and size, such as what is logged and when
- Page 19 uses language out of TGWG Guidance that gets confused when taken out of context. For example, using the word "adequately" was intended to provide management and TGRA flexibility in determining what was adequate per operation needs and size in the Guidance, but when converted to MICS it is undefined and confusing
- Page 20 (d) Draw – (1)(ii) "Where the selection is electronic…" is being used in the "Manual Bingo" section; again pieces of TGWG Guidance taken out of context, in this case removed a significant part of the guidance on randomness; there is no Draw section in "Electronic Bingo"
- Page 20 (e)(iii) verification of pattern "…as described in 25 USC…"; but that reference is not mentioned at all in electronic bingo
- Page 20 (e)(v) "Where an automated verification method…", for "Manual Bingo", was this intended to be in the "Electronic Bingo" section?
- Page 21 (B) "…player interface malfunction…", for "Manual Bingo", was this intended to be in the "Electronic Bingo" section; how can you have a player interface malfunction in "Manual Bingo"
- Page 21 (5)(ii) "…must include the number of agents required…", early controls in same section mandate two agents; are we being flexible or not?
- Page 21 (f) and (continues on page 22) – It is still recommended that all cash and cash equivalents should be in one section versus scattered across multiple sections such as "Manual Bingo"; scattered references to cash and cash equivalents makes the MICS confusing and more at risk for error in duplication
- Page 22 (g) Technologic aid to the play of bingo. – Some of the language copied from TGWG proposed MICS would not be applicable solely to "Manual Bingo"; again taking text out of context risks confusion or misinformation

- Page 10(c)(2) uses specific dollar amounts instead of referencing the external regulation. This could render the regulation obsolete as soon as the other agency changes their rules.
- Page 11 (D) Overrides – no definition; TGWG guidance is being used, but taking it out of that context can be misunderstood. The TGWG was trying to provide guidance not regulation.
- Page 11 (E) Payouts – Requires 2 agents to validate and verify payout prior to paying; remember this section is for "electronic bingo"
  - Validation and verification; "validity" may need to be clarified to indicate verifying the validity of the card, while verification is about the winning pattern

- Language from the TGWG guidance documents was used but only pieces, which taken out of context, is easily misunderstood
- Page 12 (iv) allows for the system to be one of multiple agents required but not a supervisory/management agent. It also requires "employee signatures" versus "authorization or signatures", this is limiting existing technology

- Page 11 (E)(5)(ii) Manual prize payouts… – Tier criteria differs from the definitions
- What is the term "Class II gaming system bingo" intended to imply? This is new to the industry so it should be explained if the NIGC insists on using this language. It could have negative impacts on the industry. It is detrimental to the industry to split bingo into various types. It is therefore recommended that the language of the TGWG proposal be used to avoid negatively impacting the viability of class II bingo.
- At least two agents (no longer includes the system) must verify ***every*** bingo pattern before a win is paid; surely this is an error. Perhaps they meant hand-pays
- Page 12 (e) Operational controls – Uses pieces of TGWG language from cash and cash equivalents section; all cash and cash equivalent controls should be in one section and procedures should be in guidance not regulation
- Page 12 (f) Technologic aids to the play of bingo – Used TGWG guidance language out of context again
- Page 14 (4)(ii) Uses "Agents…" from the TGWG Guidance and now it is in the MICS and is the intent to require multiple agents to verify all software signatures or an agent
- Page 14 (5) Testing – TGWG Guidance used as a MIC; this should not be in the regulation; it should be guidance
- Page 15 Uses TGWG Guidance as MICS; this should not be in the MICS as it is guidance
- Page 16 (h) (and top of page 17) Vouchers – Seems to be out of place and using language from 2010; TGWG still recommends that voucher controls and guidance should be with cash and cash equivalents information

6. <u>Section 543.8 What are the minimum internal control standards for manual bingo?</u>

- Separated manual and electronic bingo; what technology is used must not be distinguished and we must put these two sections back together or risk harming the viability of class II bingo.
- Reference comments above regarding 543.7 Electronic Bingo

7. <u>Section 543.9 What are the minimum internal control standards for pull tabs?</u>

- The TGWG spent a lot of time researching this section in order to provide a thorough proposal. The version of this section included in the Discussion Draft is very poor.

Because tidbits of language from various sources are used, the language is confusing and contradictory. Please revert to the TGWG proposal.

- Interesting that the pull tab section is not separated like bingo into electronic and manual. By no means is this suggested, but it is simply an interesting observation.
- The thresholds for prize verification are confusing.
- Page 24 (d)(i) – Specific reference should not be made to dollar amounts. Instead, the specific law should be referenced; this provide flexibility when laws external to MICS change
- Page 24 (f) Statistical records – In very busy 24–hour operations, it could be difficult to collect the win and write (sales) data on a shift basis; this also used pieces of TGWG guidance but removed the "…as required…" completely changing the intent

8. Section 543.10 What are the minimum internal control standards for card games?

- This section needs some work. The Discussion Draft uses pieces of the TGWG recommendation, but there are some important ones missing.
- Not much in the way of card game inventory controls, which is similar to the existing 543 and the TGWG clearly recommends requiring inventory controls
- Page 24 (b) Exchanges or transfers. – Much of this is too procedural (should be handled in guidance) and others missing or inadequately covered
- Page 26 (g) Promotional Progressive Pots and Pools; mostly procedural and should be handled in guidance not MICS
- Page 26 (g)(3) & (4) should not reference specific dollar amounts versus referencing the applicable external law so if that external law ever changes it is automatically accommodated
- Page 26 (g)(5) covering rules when (f) Posted Rules was already covered; which is correct?
- Page 27 (11) requires specific security on promotional funds but similar controls were not applied for non-promotional funds and the language is inconsistent with TGWG proposals which place all transfers of cash and cash equivalents into a single section

9. Section 543.12 What are the minimum internal control standards for gaming promotions and player tracking systems?

- TGWG separated promotions from player tracking, why does the Discussion Draft they put them back together
- May have removed controls on promotion payouts
- Review definition of "gaming promotion" to ensure that it references "Class II game play"

- We understand TAC recommended deletion of "Gaming promotions" and "player tracking" sections completely as these topics do not address gaming activities. At most, these sections should be in the guidance documents and not the MICS.
- Page 28 (c) Player tracking is using what looks like the old 2010 language and is quite out-of-date. This needs to be made current.

10. Section 543.13 What are the minimum internal control standards for complimentary services or items?

- Removed the definition of complimentary items, should it be returned or is it replaced by 543.13(b)?
- We understand TAC recommended deletion of comp section completely because gaming activities are not involved. Should be deleted.

11. Section 543.14 What are the minimum internal control standards for patron deposit accounts and cashless systems?

- Merged sections vs. TGWG proposed separate sections. The TGWG proposal is more understandable and workable.
- Removed the unrestricted patron deposit account completely, claiming it isn't allowed under the new provisions to the Bank Secrecy Act
  - Need to review final changes to BSA
- With the change in the definition of agent this section will likely require a person, other than the patron, to be involved in every transaction. This would be too difficult for operations to accommodate.
- Page 30 (a)(2) states "Smart cards cannot maintain the only source of account data."; but the definition of smart cards states that it is the only source of account data
- Page 30 (b)(1) and continues on page 31 – used pieces of TGWG language but removed "Reliance on a secured personal identification number (PIN) entered by the patron is an acceptable method of verifying patron identity.", which is a significant loss and requires every single transaction to have ID presented. This could limit technology and unnecessarily add overhead costs.
- Page 31 (4)(iii) The examples given include "adjustments" the section (4) only states deposits and withdrawals; adjustments are not appropriate in patron changes to the account

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12. Section 543.15 What are the minimum internal control standards for lines of credit?

- Used "supervision" in other sections but not this one. Why?
- Page 32 (a)(1)(v)(e) and (f) are new requirements that obviously do not apply to the application for credit limit process

13. Section 543.17 What are the minimum internal control standards for drop and count?

- This section as proposed is very procedural and separated by department or game type, which is confusing. It needs quite a bit of work to be usable.
- Page 34 is primarily TGWG proposed MICS, with these exceptions
  - (b) used "...limit physical access to the count room to count team agents, designated staff, and other authorized agents..." versus TGWG "...other authorized persons..."; this can be an issue as people other than authorized agent may require properly supervised access for emergencies, repairs, etc.
  - (c) used "Controls must be established and procedures implemented to ensure..." versus TGWG "Controls must be established and procedures implemented ***in a manner designed*** to ensure..." Controls cannot be developed to "ensure" anything; they can only be "designed to ensure" something.
- Page 35 (d) Card game drop standards. – TGWG has combined this requirement for all drop types and the NIGC draft has them separated by department or game type; this can be confusing, because:
  - Page 36 (f) uses "soft count" for card games; this is the only usage of that term, other count sections use "count"
  - Page 37 (8) uses "Posting rejected currency to a nonexistent interface is prohibited" but there are no interfaces in card games; surely this was intended to be "...a nonexistent table..."; the current language should go into the Player Interface section but it isn't there
  - Page 37 (f)(6)(iv) primarily from the 2010; this section likely needs considerable rework
  - Page 38 (g)(1)(ii) – "In an emergency, authorized personnel..." Why is the same allowance not covered in the soft count sections for card games
  - Page 38 has uses of the word "personnel" versus "agents" and uses the term "financial instrument storage component" versus the defined term "drop box" used elsewhere in this section
- Page 35 (e) Player interface and financial instrument drop standards. – TGWG has combined this requirement for all drop types and the NIGC draft has them separated by department or game type; this can be confusing

- Additional use of "financial instruments" could unintentionally include items not associated to Class II gaming system drops
- Also uses the term "financial instrument storage component" and MICS don't use that term anymore; should be change to the defined term "drop box." Proofreading is needed throughout.

- Page 36 (f)(3) may contradict the controls established in (b) of the same section with the use of "...authorized maintenance personnel" versus "authorized agents." Which is correct?
- Page 38 (g)(1)(5) uses a reference to "...bill-in meters...", which is a term that is no longer used
- Page 40 (h) and continues on page 41 - Controlled keys; the "...or other access methods..." in regards to keys; this limits technology
- Page 41 (h)(1)(iv) uses "...used for the drop" which did not exist in the TGWG proposed language
- Page 42 (8)(i) through (iii) are new controls or potentially from 2010. Why are they needed?

14. <u>Section 543.18 What are the minimum internal control standards for cage, vault, kiosk, cash and cash equivalents?</u>

- Kiosk is back and needs review
- (a) and (b) are TGWG but otherwise it's outdated 2010 language, which is grossly different than the TGWG proposal
- Need for rework is considerable for the entire section
- Does the NIGC intend to publish guidance documents for this section? We don't know when that is going to happen and it makes review of the MICS difficult without seeing what is going to be in the proposed guidance documents
- Page 44 (f) Patron deposit funds – This should be covered in the patron deposit account section and it requires a signature for each transaction causing unnecessary limitations on technology and adds overhead costs
- Page 45 (g) Promotional payments, drawings, and giveaways programs – Again this should be in the appropriate section to minimize confusion; also this uses $100 where the promotions section uses $600

15. <u>Section 543.20 What are the minimum internal control standards for information technology and information technology data?</u>

- New title for this topic. Why?

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- At a consultation, there was a question on (i) Remote Access. Still need an answer on whether the use of the term "agent" is appropriate in this section specifically; may be better to use "person"
- Network Communication Equipment; apparently this term was defined based on language in the TGWG Guidance documents
  - This term is used in the IT section and changed the intent of TGWG proposal to secure communication and with use of the term replacing "communication" it changes the requirements to be imposed on the "equipment" rather than on the communication
- Page 46 (a) Supervision – this is considerably different than any other supervision section for other departments/areas. Why?
- Page 46 (b) states "…physical controls" but the sub-part of this control refer to "…physical and logical…"
- Page 46 (b)(1) although it is a TGWG term we may want to clarify "information technology environment"
- Page 47 (c) although it is a TGWG usage we may want to replace the word "personnel" with "agents"
- Page 47 (e)(2) & (3) use "systems' " is also used in a variety of ways and we need to get clarified where it should read "Class II gaming system" vs. "systems' "
- Page 47 (f)(2) uses "Unused services and non-essential ports must be disabled…", while this is TGWG guidance they did not include the whole statement which adds "The manufacturer/supplier of the System must be consulted prior to the deactivation of any service or ports to ensure that an essential service/port is not inadvertently disabled. For example, many essential services only run sporadically, so usage by itself is not always a reliable measure of importance or necessity." This is a significant guidance point and shows again how things can be misunderstood when guidance is taken out of context and made a MIC
- Page 48 (g)(2) uses the word "personnel" versus "agents"
- Page 48 (h) Change management – the section header is confusing versus the proposed language "…installations and/or modifications…"
- Page 49 (k)(1)(i) uses "…information technology systems" should be changed to "…Class II gaming systems" or removed
- Page 50 (ii) uses "critical" should be "Class II gaming system", be removed, or be clarified; this could also suggest that some programs are not critical and should not be backed up
- Page 50 (3) requires annual recovery test; TGRA should determine when this is required and how frequently. Recommend deleting the word "annual."

ATTACHMENT

16. Section 543.21 What are the minimum internal control standards for surveillance?

- New sections for cage and vault and count rooms; needs careful review; appears to be old 2010 copies of Class III language, need to rework or remove
- No supervision section
- "Sufficient clarity" needs to be reviewed; applies to count, card tables, and cage based on statements made by NIGC during a consultation; need to rework the definition so that it can support technology or removed as TGRA and/or operator has the ability to determine what "sufficient clarity" is for them
- Page 52 (4)(ii) requires a dedicated camera on every cashier area (all tiers). Why?
- Page 53 (4)(iii) uses "...fill and credit transactions..", which is a phrase that is no longer used. Outdated.

17. Section 543.23 What are the minimum internal control standards for audit and accounting?

- Separated Revenue Audit into a separate section; NIGC felt it needed its own section based on statements at TAC work sessions and consultations. Still uncertain why.
- No supervision section
- Page 53 (b)(2)(ii) and (iii) are new controls, origin unknown; these need further review
- Page 53 (b)(2)(iii) uses "...its independent accountants"; who is this meant to refer to, is this mandating use of independent accountants?; surely this can't be the intent; generally recorded journal entries are not recorded by independent accountants
- Page 53 and continuing onto page 54 (b)(2)(viii) through (xi) are new controls, origin unknown, likely 2010; these need further review
- Page 54 (1)(i)-(xii) regarding internal audits, this is a new section that seems to be from 2010, but needs good review
  - Uses "Manual bingo"
- Page 55 (5) states "...made available to the Commission..."; this is an example where something that is already required by other controls; it is confusing to restate information from another source versus just referencing those other sources; also is redundant of (4)
- Page 55 (8) and continues onto page 56 is a new control, origin unknown but likely 2010; surely unintentionally omits the TGRA, recommend replacing the word "Commission" with "TGRA"; needs other rework too
- Page 56 (d)(1) added "...if they provide at least the same level of controls as the MICS"
- Page 56 (d)(3)(i) in its entirety is new; needs rework to eliminate confusion

- Page 56 (d)(3)(ii) starts with new language "If the CPA determines that the internal audit procedures performed during the fiscal year have been properly completed,…"; was there an intent to require a formal determination? These things would be covered in the "agreed upon procedures" for audits; also lists games that need to be audited but it isn't all inclusive and surely that wasn't intended to exclude those that are not listed such as, games similar to bingo, electronic bingo; needs considerable rework
- Page 56 (4) SSAE acronym but it is different than the definition. Confusing and misleading.

18. Section 543.24 What are the minimum internal control standards for revenue audit?

- This section is vastly deficient and is going to need considerable review
- Separated from audit and accounting
- During a consultation NIGC suggested that this was primarily based on the TGWG guidance document, which is not what TGWG finds in our review. Was not the TGWG intent.
- No supervision section
- Page 57 (a) is from TGWG proposed MICS
- Page 57 (c)(1) uses the new term "Class II gaming system bingo." Why?
- Page 57 (c)(2) uses the term "Manual bingo." Why? Bingo is bingo and different types should not be specified. To do so harms the industry.
- Page 61 (11) uses the term "Accounting"; this is confusing, is it intended to be a reference to "audit and accounting" or "revenue audit" or something new?

19. Additional Concerns

- Missing language
  - TGWG Proposed 543.4(c) No Limitation of Technology. This part should not be interpreted to limit the use of technology or to preclude the use of technology not specifically referenced. – is missing. Needs to be reinserted.
  - TGWG Proposed 543.4(b) Only applicable standards apply… has been removed. Needs to be reinserted.
  - TGWG Proposed 543.4(d) Severability. If any provision of this part is declared invalid by a court of competent jurisdiction, such decision shall not affect the remainder of this part. – is missing. Needs to be reinserted.
- Separated manual and electronic bingo; what technology is used must not be distinguished and we must put these 2 sections back together. Very harmful to the viability of bingo.

- One of the objectives of the TGWG proposals was to ensure that MICS did not mandate hierarchy and organization structure in the way controls are organized within the MICS document; this discussion draft has some sections separated that TGWG proposed merging to eliminate confusion on who does what and provide some flexibility for TGRAs and operators to determine that in their TICS, SICS, and procedures
- The document is in tremendous need of proofreading. Very confusing and even misleading in some areas.
- Concern that bingo is bingo has been lost in separation of sections and introduction of new terms

II. 25 CFR PART 547 MINIMUM TECHNICAL STANDARDS FOR GAMING EQUIPMENT USED WITH THE PLAY OF CLASS II GAMES

- "Agent" definition has been changed and no longer allows for a computer application to act as an agent. TGWG believes that the removal of "This definition permits the use of computer applications to perform the function(s) of an agent" may be suitable in technical standards but feel strongly that it is a critical part of the definition in Part 543. As long as inconsistencies between the two parts for this definition don't cause confusion this change is accepted.
- "Cashless system" definition was modified with the term "proprietary" added. See TGWG comments on the new definition of "Proprietary Class II System Component" for clarification of TGWG concerns for the use of the word "proprietary" starting with the fact that the term is not used anywhere in the technical standards in this context.
- "Electromagnetic interference" definition is inaccurate and replacement is suggested; TGWG proposed definition is "(EMI) is the disruption of operation of an electronic device when it is in the vicinity of an electromagnetic field (EM field) in the radio frequency (RF) spectrum that is caused by another electronic device."
- "Proprietary Class II System Component" is a new term that is not used anywhere in the technical standards and therefore adds no value but certainly can cause great confusion. Operators and manufacturers throughout the industry integrate and support a multitude of components including those developed outside of the gaming industry. For instance, a gaming manufacturer may use Microsoft® Windows® as a base operating system on a Class II System. This would prevent them from doing so.
- "Reflexive software" definition does not include the TGWG proposed addition of "...or deprives a player of a prize...", which provides clarity on the intent of the standards that use this term later in this Part. TGWG also noted on 11/9/11: The added language makes this definition more consistent with the industry understanding

of reflexive technology. The proposed language operates to clearly identify the harm the provision is intended to prevent.

- "Voucher system" definition was modified with the term "proprietary" added. See TGWG comments on the new definition of "Proprietary Class II System Component" for clarification of TGWG concerns for the use of the word "proprietary" starting with the fact that the term is not used anywhere in the technical standards in this context.
- Instead of recognizing TGRAs as the primary regulators of Class II gaming, the Discussion Draft uses the phrase "...recognizing that TGRAs also regulate..."
- Grandfather section is of critical concern.
- There is great concern this Discussion Draft excludes and attempts to invalidate court decisions that allowed use of certain games. These standards nor the NIGC should be able to overturn a judicial decision of a federal court. The games may still be class II, but the NIGC is harming Indian country by limiting what games can be played and disrupting legal precedent. This should be avoided at all cost. The class II industry fought hard for these games. The NIGC should not take them away.
- Also, it is impossible for anyone to meet the grandfather requirement today because its requirements can no longer be achieved since the time has passed. Though there are many valid arguments on issues with the grandfather provision but this is the most significant justification that this section must be changed.
- Additionally, because there are changes within the previously mandated grandfather provisions, the NIGC proposed technical standards would impose new rules on previously certified grandfather products, therefore invalidating those certifications. And as a result of the timeframes, they could not go back and regain such status.
- Also, grandfathering mattered because games that were considered Class II in disputes with states regarding what is covered or not covered in a compact; grandfathering and court decisions protected those games for Indian Country when dealing with other governments. Leverage in compact negotiations.
- This rule being imposed is inconsistent with how governments with other industry; no one else requires another industry to remove all previously manufactured products from the field unless their is a flaw or defect in a product that poses danger to the user. Just because the seatbelt laws for cars are changed, we don't have to retrofit all cars currently on the road.
- The NIGC should take into consideration during the upcoming consultations that the proposed language contains what can only be unintended consequences.
- Legacy equipment should not be needlessly rendered obsolete, especially those that have been subject to judicial decisions, by operation of this regulation.
- To the extent that there may have been with the integrity of the gaming platform on the legacy system that those problems should already have been identified and corrected under the existing 547.4. The problem with the proposed NIGC language is

that is now adds new requirements for the grandfathered system that could not have been anticipated by the deadlines contained in the existing regulation and therefore were not subject to laboratory analysis and testing. By including these new requirements, the regulation will operate to render prior laboratory testing results invalid.

- TGWG is still concerned that existing and further the proposed regulations attempt to invalidate any components previously validated by federal judicial proceedings.
- Missing language that was proposed by TGWG - Nothing in this rule is intended to prohibit the continued use of any Class II Gaming component that was previously certified against the grandfather provisions or judicial ruling.
- The arbitrary minimum probability requirements were removed but if odds exceed a 100 million to 1 threshold the game must continually display that fact to the player. Why?
- Removed the restriction on tribes owning test laboratories as long as they are independent
- UL certification requirement was removed
- Player interfaces must "display the serial number" – TGWG proposes changing that to "bear the serial number"
- Recall of the entertaining display was removed
- Regarding "Game initiation and play" and any change in rules still uses "...no automatic or..." – The TGWG supports the requirement that rules, including those that may change based on player choices and participation, must be fully disclosed. We recommend eliminating the words "automatic or" because it can be misunderstood. For example, this language could be construed to prohibit the ability of a Class II game to offer a bonus feature that automatically initiates different or additional rules, which is obviously not the intent of the proposed language if the bonus feature is covered in the game rules.
- Missing section on severability
- Note that Part 543 has the recognition that the TGWG is the primary regulator; we need to make a note asking for consistency using the MICS language in the Technical Standards
- "It must not be possible..." language in the unpredictability standards for RNGs should be changed because TGWG believes that given the required skills, data, and knowledge of the algorithm it is possible to predict outcomes. However, the likelihood of anyone having all of the required skills and knowledge to make such prediction is not feasible given regulations and industry standards.
- Remote access can no longer be logged by TGRA